

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DONNA CORBELLO,

Plaintiff,

vs.

THOMAS GAETANO DEVITO, *et al.*,

Defendants.

Case No. 2:08-cv-00867-RCJ-PAL

**ORDER**

(Mot to Reconsider - Dkt. #347)  
 (Reqst Leave Respond - Dkt. #493)  
 (Mot. Strike - Dkt. #496)

The court conducted a hearing on April 14, 2011, on the parties' numerous discovery disputes. Gregory Guillot, George Paul and Robert McKirgan appeared on behalf of the Plaintiffs, and Samuel Lionel, Daniel Mayeda, David Korzenik, Maximiliano Couvillier, III, and Eric Swanis appeared on behalf of the Defendants. This order disposes of the following moving and responsive papers:

**#347** - Plaintiff's Motion for Reconsideration by the United States Magistrate Judge of Her Order Dated November 12, 2010 (Doc. 345);

**#350** - Sealed Exhibits to #347 Motion;

**#354** - New Defendants' Memorandum in Opposition to Plaintiff's Motion for Reconsideration by U.S. Magistrate Judge of Her Order Dated November 12, 2010;

**#355** - New Defendants' Supplement to Memorandum in Opposition to Plaintiff's Motion for Reconsideration by U.S. Magistrate Judge of Her Order Dated November 12, 2010;

**#406** - Plaintiff's Reply to Defendant's Response to Motion for Reconsideration by the United States Magistrate Judge of Her Order Dated November 12, 2010, (Doc. 345) and Consolidated Memorandum in Support;

**#407** - Sealed Exhibits to #406 Reply;

**#491** - New Defendants' Objections to Plaintiff's New Material and New Arguments Submitted in Her Reply Brief in Support of Her Request for Reconsideration of the Court's Discovery Order;

1       **#493** - Request for Leave to Respond to Plaintiff's New Material (*in #491 Objections*);

2       **#496** - Plaintiff's Motion to Strike New Defendant's Objections to Plaintiff's New Arguments  
3       Submitted in Her Reply Brief in Support of Her Request for Reconsideration of the  
4       Court's Discovery Order and Opposition to New Defendant's Request for Leave to  
5       Respond to Plaintiff's New Material

6       **#493** Request for Leave to Respond to Plaintiff's New Material (*in #491 Objections*); and

7       **#496** Plaintiff's Motion to Strike New Defendant's Objections to Plaintiff's New Arguments  
8       Submitted in Her Reply Brief in Support of Her Request for Reconsideration of the  
9       Court's Discovery Order and Opposition to New Defendant's Request for Leave to  
10      Respond to Plaintiff's New Material

11      Plaintiff seeks reconsideration of an Order entered November 12, 2010 (Dkt. #345). The order  
12      was entered following a hearing conducted July 13, 2010, on: (1) a Motion for Protective Order (Dkt.  
13      #298) filed by the New Defendants; (2) a Cross-Motion to Compel (Dkt. #326), filed by Plaintiff,  
14      directed to Defendants Brickman and Elise; and (3) Plaintiff's Cross-Motion for Sanctions (Dkt. #327).  
15      At the July 13, 2010 hearing, the court ordered counsel to meet and confer, in person, concerning  
16      Plaintiff's document production request No.s 9 and 16 to Defendants Brickman and Elise, which the  
17      court found overly broad and Defendants' responses, which the court found incomplete and/or evasive.  
18      The court also required the parties to prepare a Joint Status Report by August 10, 2010, and conducted a  
19      follow-up hearing on August 12, 2010, regarding the issues presented in the motions and Joint Status  
20      Report. The motions, discovery disputes identified in the Joint Status Report, and arguments of counsel  
21      at the August 10th hearing made a large number of requests for relief from the court. The court  
22      therefore directed counsel for both sides to submit a proposed order outlining the relief each party  
23      requested, as well as their proposed findings.

24      The court reviewed the parties' proposed orders and entered an Order (Dkt. #345) resolving all  
25      outstanding disputes. Plaintiff now seeks reconsideration of a number of those findings and rulings.  
26      Having reviewed and considered the moving and responsive papers and the arguments of counsel, the  
27      court will grant Plaintiff's Motion to Reconsider to the limited extent the New Defendants shall  
28      produce the native files used with the MovieMagic Screenwriter software files for the *Jersey Boys*  
script, and drafts of scripts, as well as the Word and RTF files in the script directory. These files were  
produced in either PDF or TIFF format. Plaintiff originally requested discovery in native format, but  
the parties did not reach an agreement for production in native format and the New Defendants

1 produced in PDF format. Counsel for the New Defendants subsequently produced documents in TIFF  
2 format at the request of counsel for Plaintiff.

3 The court originally denied Plaintiff's request for native files based on the representations of  
4 defense counsel and their principals that all scripts, script drafts and change pages had been produced  
5 and that the scripts and draft scripts were fully searchable in PDF format, and therefore reasonably  
6 usable for purposes of Fed. R. Civ P. 34(b)(2)(E)(iii). However, having reviewed the voluminous  
7 moving and responsive papers, the court is persuaded that reconsideration of this aspect of the court's  
8 prior Order (Dkt. #345), is warranted. The court's prior order found that production of scripts and  
9 drafts in PDF was a reasonably useful format that comported with the New Defendants' ESI discovery  
10 obligations. The court now believes that finding was erroneous based on additional judicial training  
11 received in discovery of ESI, independent research, and increased appreciation of the factual and legal  
12 implications of discovery of electronically stored information.

13 Rule 34(b)(2)(E) permits a party responding to a request for electronically stored information  
14 which does not specify a form for producing it, to produce it in a form or forms in which it is ordinarily  
15 maintained, or in a reasonably usable form or forms. Plaintiff requested native form. Defendants  
16 objected to producing native form, and produced the documents in PDF and/or TIFF format. However,  
17 the writers who created and maintained the *Jersey Boys* script did so in Microsoft Word, RTF, and in  
18 some cases, the extent of which the parties dispute, using the MovieMagic Screenwriter software  
19 program. By producing the scripts in TIFF and PDF format, the Defendants converted them from their  
20 native, dynamic form to a static, two-dimensional image form, rendering them not "reasonably usable."  
21 See, Sedona Principle 12 Comment 12a, and Advisory Committee Notes to the 2006 Amendment of  
22 Rule 34(b). Accordingly,

23 **IT IS ORDERED** that:

- 24 1. Plaintiff's Motion to Reconsider (Doc. 345) is **GRANTED** to the limited extent the New  
25 Defendants shall produce scripts and drafts of the scripts for *Jersey Boys*, as well as  
26 drafts of the abridged *Jersey Boys Libretto*, and Coffee Table Book using Microsoft  
27 Word, RTF, and the MovieMagic Screenwriter software program in native format.
- 28 2. The motion is denied in all other respects.

4